

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DAVID JOHNSTON,

Plaintiff,

v.

VIVA CAPITAL LLC, et al.

Defendants.

Case No. 2:19-cv-00073-GMN-GWF

ORDER

This matter is before the Court on Plaintiff's Motion to Seal Exhibit Records (ECF No. 3), Motion to Allow Exhibits Over 100 Pages (ECF No. 4), and Motion for Appointment of Counsel (ECF No. 6) filed January 10, 2019.

Plaintiff filed this instant action and filed an Application to Proceed *In Forma Pauperis* (ECF No. 1) pursuant to 28 U.S.C. § 1915. Plaintiff appears *pro se* and alleges claims against Defendants for patent infringement in violation of 35 U.S.C. §§ 261, 271, 1331, and 1338. He also alleges claims of false promises, retaliation – whistleblowing, fraud, and harassment. Under 28 U.S.C. § 1915(e) the Court is required to screen a complaint of an applicant who requests to proceed *in form pauperis*.

The Court has not yet reached its decision related to Plaintiff's complaint, but has reviewed his motion to seal, motion for leave to file excess pages, and motion for appointment of counsel. Upon review and consideration, the Court finds good cause exists and therefore grants Plaintiff's request to seal the records. The Court denies Plaintiff's request to file and allow exhibits over 100 pages (ECF No. 4) and finds the exhibits (ECF No. 2) referred to in Plaintiff's motion do not require attachment to Plaintiff's Complaint. However, Plaintiff may include and

1 elect to serve these documents in his initial disclosures under Fed. R. Civ. P. 26(a) or identify
2 them as responsive to written discovery requests as this action commences.

3 Plaintiff further requests an order appointing him counsel in this case because he cannot
4 afford to hire an attorney. He represents the allegations in his complaint constitute a matter of
5 national security and/or great public interest which thereby require appointment of counsel.

6 There is no constitutional right to the appointment of counsel in civil cases. *Ivey v. Board*
7 *of Regents of Univ. of Alaska*, 673 F. 2d 266, 269 (9th Cir. 1982). Pursuant to 28 U.S.C. §
8 1915(e)(1), the court “may request an attorney represent” litigants proceeding in forma pauperis.
9 *Id.* The statute does not require the court to appoint counsel to represent such litigants, but only
10 request such representation on a pro bono basis. *See Mallard v. United States Dist. Ct.*, 490 U.S.
11 296, 304-05 (1989); *United States v. 30.64 Acres of Land*, 795 F. 2d 796, 798-804 (9th Cir.
12 1986).

13 A court may only designate counsel pursuant to 28 U.S.C. § 1915(d) in exceptional
14 circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In determining
15 whether counsel should be appointed, the Court has discretion to consider four relevant factors:
16 (1) the plaintiff’s financial resources; (2) the efforts made by the plaintiff to secure counsel; (3)
17 the meritoriousness of the plaintiff’s claim; and (4) the ability of the petitioner to articulate his
18 claims pro se in light of the complexity of the legal issues involved. *Ivey*, 673 F.2d at 269;
19 *Wilborn*, 789 F.2d at 1331. Here, Plaintiff has not established that exceptional circumstances
20 exist to justify the appointment of counsel. Moreover, Plaintiff demonstrates sufficient ability to
21 write and articulate the complexity of legal issues involved in this case. Plaintiff filed his
22 Application to Proceed *In Forma Pauperis*, as well as four (4) other motions and orders¹, all of
23 which demonstrate that he is able to sufficiently represent himself.

24 The Court appreciates that it is difficult for pro se parties to litigate their claims that
25 almost every pro se party would benefit from representation by counsel. However, the Court
26

27 ¹ Motion and Order to Seal Exhibit Records (ECF No. 3); Motion and Order to Allow Exhibits Over 100 Pages (ECF
28 No. 4); Motion for Service by US Marshals (ECF No. 5) Motion and Order for Appointment of Pro Bono Counsel
(ECF No. 6).

1 cannot require counsel to accept representation on a pro bono basis, and the number of attorneys
2 available to accept appointment is very limited. Accordingly,

3 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Seal Exhibit Records (ECF No.
4 3), is **granted**. Plaintiff's Motion to Allow Exhibits Over 100 Pages (ECF No. 4) and Motion for
5 Appointment of Counsel (ECF No. 6) are **denied**.

6 Dated this 15th day of January, 2019.

7
8 

9

GEORGE FOLEY, JR.
UNITED STATES MAGISTRATE JUDGE